MEDIA STATEMENT

IMPACT OF THE LOCKDOWN ON NERSA OPERATIONS

Following the nation-wide lockdown announced by President Cyril Ramaphosa on Monday, 23 March 2020, the Energy Regulator decided on 26 March 2020 that NERSA would suspend its operations for the duration of the lockdown.

This means that NERSA business, including Energy Regulator decisions that need public participation processes such as public hearings, has been put on hold, and cannot be carried out.

NERSA has recently received concerns regarding delays in decision making, particularly related to the approval of licence and registration applications from independent power producers during the lockdown period. NERSA understands these concerns and fully appreciates the gravity of the country’s electricity supply constraints.

However, NERSA’s processes and decisions are administrative in nature and must be guided by section 33 of the Constitution of the Republic of South Africa, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (‘PAJA’) and section 10 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) (‘NERA’).

Section 10 of the National Energy Regulator Act requires every decision of the Energy Regulator to be:

- consistent with the Constitution and all applicable laws;
- in the public interest;
- taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;
- based on reasons, facts and evidence that must be summarised and recorded; and
- explained clearly as to its factual and legal basis and the reasons therefor.
NERSA must comply with the legal prescripts. Failure to do so may result in its decisions being taken for judicial review in the High Court. During the lockdown period, NERSA will not be conducting public hearings as a means of stakeholder participation process, but will utilize the notice and written comments process to satisfy the requirement of NERA read with PAJA.

NERSA is committed to the wellbeing of its staff and stakeholders, as well as to addressing all threats posed by the COVID-19 pandemic.

End.

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